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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,699	11/21/2003	Srinivasan Viswanathan	103.1031.04	1349
22883	7590	02/28/2006	EXAMINER	
SWERNOFSKY LAW GROUP PC P.O. BOX 390013 MOUNTAIN VIEW, CA 94039-0013			PUENTE, EMERSON C	
			ART UNIT	PAPER NUMBER
			2113	
DATE MAILED: 02/28/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/719,699

Applicant(s)

VISWANATHAN ET AL.

Examiner

Emerson C. Puente

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 12-15 and 19 is/are rejected.
- 7) ☒ Claim(s) 7-11 and 16-18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/30/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claims 1-19 have been examined.

This action is made **Non-FINAL**.

Claim Objections

Claim 19 is objected to because of the following informalities:

Claim 19 has unacceptable multiple dependent claim wording. Please change "... any one of claims 1, 2, 3, 16, 17, or 18" to "... any one of claims 1, 2, 3, 16, 17, and 18".

See MPEP § 608.01(n).

Appropriate correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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Claims 1-6, 12-15, and 19 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1-6 of U.S. Patent No. 6,654,912. Although the conflicting claims are not identical, they are not patentably distinct from each other.

In regards to claim 1, Patent '912 discloses:

creating at least one snapshot for each mirrored file system volume of a plurality of file system volumes including a consistency point value in said at least one snapshot indicating sequence in which said at least one snapshot was generated. Patent '912 discloses a "examining a plurality of mirrored file system volumes for a consistency point value" (see claim 1, column 7 lines 10-11). A consistency point value is understood to be a value in said at least one snapshot indicating sequence in which said at least one snapshot was generated (see page 4 lines 42-51 and claim 4, column 8 lines 2-5).

examining the plurality of mirrored file system for a consistency point values.
(see claim 1, column 7 lines 10-11).

determining the most up-to-date said file system volume base on the consistency point values (see claim 1, column 7 lines 12-13).

With regard to the additional limitations in claim 1 of Patent '912, which are not included in the claim 1 of the application, the omission of these limitation in the claim 1 of the application is an obvious expedient since the remaining limitations in claim 1 of the Patent '912 perform the same function as the limitations in claim 1 of the application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

In regards to claim 2, Patent '912 discloses:

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determining a snapshot held in common between said most up-to-date said file system volume and at least one other mirrored file system volume of said plurality of mirrored file system volumes; and selecting those file blocks changed between said snapshot held in common and said most up-to-date said file system volume (see claim 2).

In regards to claim 3, Patent '912 discloses:

re-synchronizing said at least one other mirrored file system volume of said plurality of mirrored file system volumes with said most up-to-date said files system volume in response to said steps of selecting (see claim 3).

In regards to claim 4, Patent '912 discloses:

a plurality of mirrored file system volumes, each having at least one snapshot including an entire consistent file system, each said snapshot having a consistency point value indicating sequence in which each said snapshot was generated (see claim 4, column 8 lines 2-5);

a first comparison element capable of being coupled to a plurality of said consistency point values and capable of determining a most up-to-date mirrored file system volume of the plurality of mirrored file system volumes based on the consistency point values (see claim 4, column 8 lines 7-8);

a second comparison element, responsive to an output of said first comparison element, said second comparison element being capable of being coupled (a) to a first snapshot associated with said most up-to-date mirrored file system volume and (b) to a second snapshot associated with a second said volume, said second comparison element being capable of providing a selection of file blocks that differ between said second

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volume and said most up-to-date mirror file system volume (see claim 4, column 8 lines 10-17)

In regards to claim 5, Patent '912 discloses:

wherein said second snapshot is held in common between said most up-to-date mirrored file system volume and said second volume (see claim 5).

In regards to claim 6, Patent '912 discloses:

an element capable of re-synchronizing second volume in response to said second comparison element (see claim 6).

In regards to claim 12, Patent '912 discloses:

re-synchronization element capable of copying the selected file blocks from said most up-to-date mirrored file system volume to said second volume (see claim 6).

In regards to claim 13, Patent '912 discloses:

wherein said file system volumes include a RAID subsystem. Patent '912 discloses system volumes (see claim 4). A "RAID subsystem" is merely a subset of all possible types of system volumes (see column 6 lines 60-65).

In regards to claim 14, Patent '912 discloses:

wherein said file system volumes include volumes for parallel stored systems. Patent '912 discloses system volumes (see claim 4). A "parallel stored system" is merely a subset of all possible types of system volumes (see column 6 lines 60-65).

In regards to claim 15 Patent '912 discloses:

a first element capable of creating at least one snapshot for each mirrored file system volume of the plurality of mirrored file system volumes and including a

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consistency point value in said at least one snapshot indicating sequence in which said at least one snapshot was generated. Patent '912 discloses a "examining a plurality of mirrored file system volumes for a consistency point value" (see claim 1, column 7 lines 10-11). A consistency point value is understood to be a value in said at least one snapshot indicating the sequence in which said at least one snapshot was generated (see column 4 lines 42-51 and claim 4, column 8 lines 2-5).

a second element capable of examining the snapshots of the plurality of mirrored file system volumes for consistency point values (see claim 1, column 7 lines 10-11);

a third element of determining a most up-to-date said file system volume based on the consistency point value (see claim 1, column 7 lines 12-13).

With regard to the additional limitations in claim 1 of Patent '912, which are not included in the claim 15 of the application, the omission of these limitation in the claim 15 of the application is an obvious expedient since the remaining limitations in claim 1 of the Patent '912 perform the same function as the limitations in claim 15 of the application (*In re Karlson*, 136 USPQ 184 (CCPA 1963)).

Patent '912 discloses claim 19 in view of claims 1, 2, 3 of instant application (see claims 1, 2, and 3 of Patent '912).

Allowable Subject Matter

Claims 7-11 and 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Emerson C. Puente whose telephone number is (571) 272-3652. The examiner can normally be reached on 8-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert W. Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ecp
7/12/05

